

Hearing Date and Time: September 26, 2013 at 10:00 a.m.
Response Deadline: September 19, 2013 at 4:00 p.m.

Jack A. Raisner (JR 6171)
OUTTEN & GOLDEN LLP
3 Park Avenue, 29th Floor
New York, New York 10016
Telephone: (212) 245-1000
Fax: 646-509-2070
Email: jar@outtengolden.com

Gary Gwilliam (*pro hac vice pending*)
Randall E. Strauss (*pro hac vice pending*)
GWILLIAM, IVARY, CHIOSSO, CAVALLI & BREWER
1999 Harrison Street, Suite 1600
Oakland, California 94612-3528
Telephone: (510) 832-5411
Fax: (925) 820-0335
Email: GGwilliam@giccb.com
Email: rstrauss@giccb.com

Mark S. Bostick (*pro hac vice pending*)
WENDEL, ROSEN, BLACK & DEAN LLP
1111 Broadway, 24th Floor
Oakland, California 94607-4036
Telephone: (510) 834-6600
Fax: (510) 834-1928
Email: mbostick@wendel.com

*Attorneys for Claimants, Sylvia Vega-Sutfin,
Michelle Seymour, Cheryl McNeil, Linda
(Weekes) Howard-James, Isabel Guajardo and
Coleen Denise Colombo*

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re

LEHMAN BROTHERS HOLDINGS,
INC., *et al.*,

Debtors.

Chapter 11

Case No. 08-13555 (JMP)

(Jointly Administered)

**RESPONSE AND OPPOSITION TO THE FOUR HUNDRED AND THIRTY-FIRST
OMNIBUS OBJECTION TO CLAIMS NOS. 5222, 5223, 5224, 5225, 5226 AND 5227
AND REQUEST FOR RELIEF FROM INJUNCTION**

Claimants Sylvia Vega-Sutfin, Michelle Seymour, Cheryl McNeil, Linda Howard-James, Isabel Guajardo and Denise Colombo (collectively, “Claimants”), holders of Claims Nos. 5222, 5223, 5224, 5225, 5226 and 5227, respectively (collectively the “Claims”), respond to and oppose the Plan Administrator’s Four Hundred and Thirty-First Omnibus Objection to Claims (the “Omnibus Objection”) as follows.

1. The Claimants are former employees of BNC Mortgage Inc. (“BNC”), a debtor herein, whose Claims are based on causes of action stated in a complaint (the “Complaint”) pending in Sacramento County Superior Court of California, Case No. 05AS05161 (the “Action”) that was pending at the time the debtors filed their bankruptcy petitions.

2. The causes of action under the Complaint are governed by California law and include claims for employment discrimination, harassment, failure to prevent discrimination, retaliation, intentional infliction of emotional distress, defamation, wrongful termination, breach of contract and breach of implied covenant of good faith and fair dealing, as more particularly set forth in the Complaint attached to each Claim.

3. The allegations set forth in the Complaint detail egregious conduct on the part of BNC that precipitated its eventual failure. The Claimants were employees of BNC who complained to their supervisors about fraudulent and illegal lending practices beginning in 2005. Each of them was told by BNC to ignore the fraudulent and illegal lending practices. When they refused, they were each subjected to retaliation and harassment that eventually led to their constructive termination. If BNC had heeded the warnings from these employees, it might have averted this bankruptcy. All of the Claimants have claims for economic damages and non-economic damages, including severe emotional distress.

4. The amount of damages sustained by each Claimant is as yet undetermined pending completion of the Action.

5. The Claims are not barred by any applicable statutes of limitation.

6. The Claims were timely and properly filed in the BNC bankruptcy case.

7. The Plan Administrator's stated grounds for its Omnibus Objection are that it has determined that the Claims do not reflect the correct amount because:

- the applicable chapter 11 estate has no liability for a portion of the claim,
- the claim was filed against the incorrect chapter 11 estate,
- the claimant failed to value the claim appropriately.

8. The Plan Administrator fails to state any legal or factual basis for its objection that the Claims as filed do not reflect their fair, accurate and reasonable value and therefore fails to state any grounds for an objection, much less any permissible grounds to invoke the omnibus objection procedure under Bankruptcy Rule 3007 (d) and the Claim Procedures Order.

9. The Claimants are entitled to a jury trial on the Claims.

10. The Claims include personal injury tort claims that may not be tried by the bankruptcy court pursuant to 28 U.S.C. §157(b)(5).

11. By the time of the hearing on this Omnibus Objection, more than five years will have passed since the debtors' cases were filed on September 15, 2008, during which time Claimants have been enjoined from proceeding to liquidate their claims in state court.

12. The parties have engaged in ongoing settlement negotiations of these Claims since June of 2013. Because no resolution has been achieved, Claimants have requested that the matter be mediated. To date, counsel for the Plan Administrator have not responded to that request.

13. As all of the Claimants reside in Northern California and the Claims arose in Northern California, Claimants request that the matter be ordered to mediation in San Francisco, California. Debtor's counsel maintains an office in Northern California with more than fifty lawyers. In addition, the approved mediator list in this case includes at least five San Francisco area mediators.

WHEREFORE, these Claimants request that the Omnibus Objection be denied and that these Claimants be granted relief from the Plan injunction to proceed with the Action to obtain an order determining the amount of their Claims while preserving the injunction as to any action against property of the Trust. Alternatively, or in addition to the foregoing, these Claimants request that this matter forthwith be referred to mediation in California.

DATED: September 16, 2013

OUTTEN & GOLDEN LLP

By: /s/ Jack A. Raisner
Jack A. Raisner (JR 6171)
3 Park Avenue, 29th Floor
New York, New York 10016
Telephone: (212) 245-1000
Fax: 646-509-2070
Email: jar@outtengolden.com

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By: /s/ Gary Gwilliam
Gary Gwilliam (*pro hac vice pending*)
Randall E. Strauss (*pro hac vice pending*)
1999 Harrison Street, Suite 1600
Oakland, California 94612-3528
Telephone: (510) 832-5411
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Email: GGwilliam@giccb.com
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WENDEL, ROSEN, BLACK & DEAN LLP

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Mark S. Bostick (*pro hac vice pending*)

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Oakland, California 94607-4036

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